

1 BRAD D. BRIAN (State Bar No. 79001)  
brad.brian@mto.com  
2 MICHAEL R. DOYEN (State Bar No. 119687)  
michael.doyen@mto.com  
3 DANIEL B. LEVIN (State Bar No. 226044)  
daniel.levin@mto.com  
4 BETHANY W. KRISTOVICH (State Bar No. 241891)  
bethany.kristovich@mto.com  
5 JOHN M. GILDERSLEEVE (State Bar No. 284618)  
john.gildersleeve@mto.com  
6 MUNGER, TOLLES & OLSON LLP  
350 South Grand Avenue, 50th Floor  
7 Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
8 Facsimile: (213) 683-5180

9 Attorneys for Defendants  
10 MGM RESORTS INTERNATIONAL,  
MANDALAY BAY, LLC, and MGM  
RESORTS FESTIVAL GROUNDS LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OLGA RAMIREZ, et al.,

## Plaintiffs,

VS.

MG M RESORTS INTERNATIONAL,  
et al.,

## Defendants.

Case No.: LACV18-05564 JAK (FFMx)

## **JOINT RULE 16(b)/26(f) REPORT**

Date: July 17, 2018

Time: 1:30 p.m.

Ctrm: 10B

Judge: Hon. John A. Kronstadt

1 Pursuant to the Court's July 5, 2018 Order, Plaintiffs and Defendants jointly  
2 submit this Rule 16(b)/26(f) Report.

3 **A. Statement of the Case**

4 This action arises from the tragic mass shooting at the Route 91 Harvest  
5 festival in Las Vegas, Nevada on October 1, 2017.

6 **Plaintiffs' Statement**

7 On July 3, 2018, plaintiffs asked defendants to stipulate to dismissal of this  
8 action so that it could be properly filed in Nevada state court, but defendants  
9 refused. As such, plaintiffs will be filing a motion to dismiss on July 13, 2018.

10 Olga Ramirez and Justin Bowles ("Plaintiffs") were attendees at the Route 91  
11 Harvest festival when Stephen Paddock opened fire into a crowd of people,  
12 resulting in the deaths of fifty-eight (58) people and injuries to thousands more,  
13 including Plaintiffs. Ms. Ramirez sustained a gunshot wound to her back and, along  
14 with Mr. Bowles, sustained severe emotional distress as a result of being involved in  
15 the horrific event. As a result, Plaintiffs underwent medical care. Plaintiffs filed a  
16 Complaint in Los Angeles Superior Court on January 25, 2018 alleging negligence  
17 theories.

18 Since the time of filing, Plaintiffs have learned that there is an organized  
19 group of plaintiffs' counsel working for the victims of the shooting and that they  
20 intend to file all of the cases in Nevada state court. The first case removed on the  
21 SAFETY Act is currently pending in the District of Nevada with a motion to remand  
22 filed and pending. (*See* Pls.' Exhibit B Motion to Remand) Plaintiffs have further  
23 learned that some additional information has come to light that is being addressed in  
24 the Nevada case. (*See* Pls.' Exhibit C Motion for Extension). Investigation has  
25 shown that the proper defendants are Nevada residents. Therefore, Plaintiffs plan to  
26 move to dismiss this case without prejudice and re-file it in Nevada state court.  
27 Alternatively, Plaintiffs respectfully request that either this case be stayed while the  
28 motion to remand based on the SAFETY Act is decided in the District of Nevada or

1 that this case be transferred to the District of Nevada.

2       Defendants' Statement

3       Forty lawsuits, on behalf of 634 individuals, have been filed to date against  
 4 Defendants, or a combination thereof, alleging personal injury, death, or emotional  
 5 distress from Paddock's extraordinary crime. As plaintiffs continue to shop for a  
 6 preferred forum, 36 of the lawsuits have been voluntarily dismissed with intention to  
 7 re-file, leaving three actions currently in this Court and one action in Nevada federal  
 8 court.<sup>1</sup> Defendants expect many more actions to be filed (or re-filed), as Defendants  
 9 have received hold letters from counsel purporting to represent 2549 individuals.

10      The negligence claims asserted by these many Plaintiffs are meritless, as  
 11 Defendants respectfully suggest will be clear once this Court, or any court, considers  
 12 them. *First*, they are barred by federal law. After the tragic events of September 11,  
 13 2001, Congress enacted the Support Anti-terrorism by Fostering Effective  
 14 Technologies Act of 2002, 6 U.S.C. § 441 *et seq.* ("SAFETY Act"), which provides  
 15 for exclusive federal jurisdiction over "all actions for any claim for ... personal  
 16 injury, or death" arising from acts of mass violence where technologies or services  
 17 certified by the U.S. Department of Homeland Security were used to prevent or  
 18 respond to mass violence. *Id.* § 442(a)(1).

19      The SAFETY Act provides that "[t]here shall exist *only one cause of action*"  
 20 for such injuries, and that it "may be brought *only against the Seller* [of the certified  
 21 technologies or services] ... *and may not be brought against ... any other person or*  
 22 *entity.*" 6 C.F.R. § 25.7(d) (emphasis added). Contemporary Services Corporation  
 23 ("CSC") was the Security Vendor at the festival and used its DHS-certified services;  
 24 it therefore is the only proper defendant on these claims. Plaintiffs in this action  
 25 have recently dismissed CSC in a futile effort to avoid the statutory bar on their

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26      <sup>1</sup> Plaintiffs attach to this report 86 pages of plaintiff-side briefing and exhibits from the Nevada  
 27 action, including a request for an extension to respond to a motion to dismiss and a motion to  
 28 which the opposition has not yet been filed. Defendants object to Plaintiffs' misuse of this report  
 and decline to burden the Court with further such exhibits, but can do so at the Court's request.

1 claims, but the law is clear that dismissal of the only possible defendant does not  
 2 create liability on the part of others.

3       *Second*, Plaintiffs' negligence claims against Defendants fail as a matter of  
 4 law. Paddock's shocking, meticulously planned assault was not reasonably  
 5 foreseeable as a matter of law and breaks any possible chain of legal causation.  
 6 Courts have rejected similar negligence claims against premises owners after other  
 7 mass shootings and acts of extraordinary criminal violence by third parties. Even  
 8 without the SAFETY Act, basic principles of tort law foreclose Plaintiffs' claims.

9           **B. Subject Matter Jurisdiction**

10           Plaintiffs' Statement

11          Plaintiff respectfully contends that the appropriate venue is in Nevada state  
 12 court. In response to Plaintiffs' state court complaint, Defendants noticed removal  
 13 based upon the "SAFETY Act," that was not intended to protect Defendants or  
 14 encompass allegations like those asserted by Plaintiffs. The first case removed on  
 15 the SAFETY Act is currently pending in the District of Nevada and there is motion  
 16 to remand filed and currently pending.

17           Defendants' Statement

18          This Court has original and exclusive subject-matter jurisdiction over this  
 19 action pursuant to 28 U.S.C. § 1331 and the SAFETY Act, 6 U.S.C. § 441 *et seq.*

20           **C. Legal Issues**

21          The key legal issues include the following:

- 22           a. Whether Defendants properly removed the case;
- 23           b. Whether Plaintiffs' claims are barred by the SAFETY Act;
- 24           c. Whether, if Plaintiffs' claims were not barred by the SAFETY Act,  
                  Plaintiffs could prove the elements of their negligence claim, namely,  
                  that Defendants breached a duty of care; that such a breach was the  
                  legal cause of the injuries Plaintiffs suffered; and that Plaintiffs  
                  suffered cognizable damages.

1           **D. Parties, and Non-Party Witnesses**

2           The parties are Plaintiffs Olga Ramirez and Justin Bowles; and Defendants  
3 MGM Resorts International, Mandalay Bay, LLC (f/k/a Mandalay Corp.), and  
4 MGM Resorts Festival Grounds, LLC. MGM Resorts International is the publicly  
5 traded parent company of the latter two defendants. Plaintiffs have just dismissed  
6 the other defendants: Live Nation Entertainment, Inc., Live Nation Group d/b/a  
7 OneNationGroup, LLC, and Contemporary Services Corporation.

8           Plaintiffs intend to call as witnesses, Plaintiffs, other parties, other percipient  
9 witnesses whose identities will be determined through discovery, Defendants'  
10 designated corporate representatives and other fact witnesses whose identities will  
11 be determined through fact discovery, and expert witnesses who have not been  
12 identified at this time.

13          Defendants intend to call as witnesses Plaintiffs, other fact witnesses whose  
14 identities will be determined through fact discovery, and expert witnesses who have  
15 not been identified at this time.

16           **E. Damages**

17           Plaintiffs' Statement

18          Plaintiffs seek monetary damages based on the contention that negligence of  
19 the Defendants was the legal cause of their injuries and damages. Plaintiffs also seek  
20 punitive damages subject to proof. Plaintiffs' calculation of damages will be  
21 determined during the course of discovery and may be subject to expert analysis.

22           Defendants' Statement

23          The SAFETY Act limits any damages recovery for personal-injury or death  
24 claims arising from the mass shooting in several respects, including limiting the  
25 total recovery to the amount of CSC's federally-mandated insurance coverage. 6  
26 U.S.C. § 443. Even setting aside the statutory limits on damages, any calculation of  
27 the realistic range of Plaintiffs' claimed damages is premature because evidence

1 relevant to such calculation will be produced in the course of fact discovery and may  
 2 be subject to expert analysis.

3       **F. Insurance**

4       In the event that Defendants incur any liability, Defendants have insurance  
 5 coverage as to which the insurance carriers have not expressed any reservation of  
 6 rights or coverage defenses that indicate they dispute coverage.

7       **G. Motions**

8           Plaintiffs' Statement

9       Plaintiff intends on filing a Motion for an Order of Dismissal Without  
 10 Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(2). Parties have met and  
 11 conferred as to the issue of Plaintiff's Motion for an Order of Dismissal Without  
 12 Prejudice and requested a stipulation to a Dismissal without prejudice, so that  
 13 Plaintiff could file in Nevada state court. Defendant denied the request for  
 14 stipulation and the motion will be filed on Friday, July 13, 2018, the earliest date  
 15 permitted by Federal Rules.

16           Defendants' Statement

17       On June 29, 2018, Defendants filed a motion to dismiss the Complaint.<sup>2</sup> The  
 18 Court has set this motion for a hearing on October 1, 2018. In addition, Defendants  
 19 anticipate filing, at the earliest appropriate time, a motion for summary judgment  
 20 based on the protections of the SAFETY Act.

21       Defendants oppose any effort by Plaintiffs to continue in the forum-shopping  
 22 that has characterized this litigation—with 36 voluntarily dismissed lawsuits—plus  
 23 dismissal of defendants in attempts to avoid federal jurisdiction and the application  
 24 of the SAFETY Act, a critical issue of first impression under federal law.

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27       <sup>2</sup> Because Defendants have filed an Answer, the motion is properly considered  
 28 under the identical standard of Federal Rule of Civil Procedure 12(c). See, e.g.,  
*Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980).

1           **H. Manual for Complex Litigation**

2           Plaintiffs' Statement

3           JPML transfer is not appropriate because there is no pending multi-district  
4 litigation. Nor would there be any reason for an MDL in this case. Plaintiffs will be  
5 dismissing their case and refiling in Nevada state court against the Nevada  
6 defendants.

7           Defendants' Statement

8           Defendants presently intend to move to consolidate this action and the other  
9 actions pursuant to 28 U.S.C. § 1407 (multidistrict litigation). Defendants believe  
10 that this Court would be an appropriate transferee court, although we understand  
11 that decision will be in the discretion of the Judicial Panel on Multidistrict  
12 Litigation. If the actions are not consolidated before one district court, or if they are  
13 consolidated before this Court, Defendants believe that it will be appropriate to  
14 consider and adopt certain procedures from the Manual for Complex Litigation,  
15 such as those relating to aggregating actions across districts, appointing lead counsel  
16 for plaintiffs, streamlining motion practice on common issues, phasing discovery  
17 (including by limiting initial discovery to matters relating to the SAFETY Act),  
18 preventing duplicative discovery, and potentially bifurcating any trial. Defendants  
19 believe that it would benefit the parties and the Court to brief these complex matters  
20 of case management separately, and before any discovery begins.

21           **I. Status of Discovery**

22           The parties have not undertaken discovery.

23           **J. Discovery Plan**

24           Plaintiffs' Statement

25           Plaintiff contends that discovery should proceed once this Court has ruled on  
26 Plaintiff's motion to dismiss and the jurisdictional issue over this matter and  
27 believes that Nevada state court is the appropriate venue.

1 Plaintiff intends to perform written discovery and depositions in accordance  
2 with Federal Rules of Civil Procedure. Plaintiff disputes that any discovery should  
3 be limited to issues pertaining to the application of the SAFETY Act. Plaintiff is  
4 entitled to perform all necessary discovery in the preparation of opposing any  
5 dispositive motions and Trial.

6 Defendants' Statement

7 Defendants believe that the initial phase of discovery should be limited solely  
8 to issues pertaining to the application of the SAFETY Act. Defendants expect that  
9 this initial discovery would confirm the role of CSC—the Security Vendor, recently  
10 dismissed by Plaintiffs—in managing security operations at the festival, including  
11 its deployment of services certified by the Department of Homeland Security to  
12 prevent and respond to acts of mass violence.

13 Under the SAFETY Act, CSC's deployment of such certified services creates  
14 exclusive federal jurisdiction and, as a matter of federal law, bars personal-injury  
15 and death claims against any entity other than CSC. Applying the SAFETY Act to  
16 this action would be a dispositive, threshold matter. This is the first time in history  
17 that an act of mass violence occurred where services certified by the Department of  
18 Homeland Security were deployed, and the application of the Act therefore  
19 represents a matter of first impression.

20 Defendants respectfully submit that discovery should be structured such that  
21 discovery bearing on the SAFETY Act is advanced and expedited in order to allow  
22 for an early motion for summary judgment under the SAFETY Act.

23 Prioritizing SAFETY Act discovery will cause no prejudice or delay because  
24 discovery concerning security at the festival site will be part of any broader merits  
25 discovery in any event. And, prioritizing SAFETY Act discovery will promote  
26 efficiency for the additional reason that such discovery is relevant to all actions  
27 against Defendants—including the action in Nevada federal court—and will be  
28 relevant to all future actions that are filed. This approach therefore will allow the

1 Court to defer consideration of how best to coordinate discovery across multiple  
 2 actions in different jurisdictions. Moreover, discovery into these limited issues also  
 3 may conserve resources because broader discovery will be unnecessary if the Court  
 4 grants Defendants' pending motion for judgment on the pleadings.<sup>3</sup>

5 **K. Discovery Cut-Off**

6 Plaintiffs' Statement

7 Plaintiffs contend that Nevada state court is the appropriate venue and that  
 8 discovery will not need to proceed in the federal court.

9 Defendants' Statement

10 As set forth above, Defendants believe that initial discovery should be limited  
 11 solely to issues relating to application of the SAFETY Act. Defendants propose that  
 12 such SAFETY Act discovery be completed by December 31, 2018. Defendants  
 13 believe that any broader merits discovery will be unnecessary because Plaintiffs'  
 14 claims are barred by federal law, which creates significant uncertainty regarding the  
 15 current state of the litigation. That actions are pending in multiple jurisdictions, and  
 16 that many more actions may be filed, adds to this uncertainty. With these caveats,  
 17 however, and because the Court has requested a proposal, Defendants propose that,  
 18 if discovery were to proceed beyond the SAFETY Act issues, all fact discovery  
 19 should be completed by October 28, 2019.

20 **L. Expert Discovery**

21 Plaintiffs' Statement

22 Plaintiffs contend that Nevada state court is the appropriate venue and that  
 23 discovery will not need to proceed in the federal court.

24 Defendants' Statement

25 Assuming that this action proceeds to expert discovery, with the same caveats  
 26 as above, Defendants propose January 6, 2020 as the date for initial expert witness

27  
 28 <sup>3</sup> For these reasons, Defendants state pursuant to Federal Rule of Civil Procedure  
 26(a)(1)(C) that initial disclosures are not appropriate at this time.

1 disclosures, February 17, 2020 as the date for rebuttal expert witness disclosures,  
2 and March 30, 2020 as the expert discovery cut-off.

3 **M. Dispositive Motions**

4 Plaintiffs' Statement

5 Plaintiffs contend that Nevada state court is the appropriate venue. Plaintiffs  
6 nevertheless intend to oppose Defendants' dispositive motions when filed.

7 Defendants' Statement

8 Defendants have filed a motion for judgment on the pleadings<sup>4</sup> on the grounds  
9 that the Complaint fails to state a negligence claim as a matter of California law. In  
10 addition, Defendants anticipate filing a motion for summary judgment on the ground  
11 that Plaintiffs' claims are barred by the SAFETY Act. If these motions are denied,  
12 Defendants anticipate filing additional summary-judgment and in limine motions,  
13 but it is premature now to describe the scope and subject matter of such motions.

14 **N. Settlement**

15 The parties have not had settlement discussions. As required by Local Rule  
16 16-15.4, the parties choose ADR Procedure No. 3 (private dispute resolution).

17 Plaintiffs' Statement

18 Plaintiffs are not opposed to productive settlement discussions.

19 Defendants' Statement

20 Defendants believe that settlement discussions will not be productive because  
21 Plaintiffs' claims are barred by the SAFETY Act. Congress created a federal cause  
22 of action against only one possible defendant (here, CSC) and precluded all claims  
23 against any other person or entity. Rather than recognize what the statute provides,  
24 Plaintiffs filed this action in state court and have recently dismissed CSC in an  
25 attempt to avoid the inevitable outcome. The SAFETY Act and associated  
26 regulations make clear that asserting claims against defendants *other than* CSC does

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27  
28 <sup>4</sup> As noted above, because Defendants have filed an Answer, the motion to dismiss  
properly is considered a motion for judgment on the pleadings.

1 not evade application of the statute, and that preventing such claims was the purpose  
2 of the SAFETY Act. Even setting aside the importance of rulings on Defendants'  
3 early, dispositive motions, any discussion of settlement necessarily is premature in  
4 light of the numerous potential plaintiffs not before the Court (because they filed  
5 and dismissed with the intent to re-file, or sent hold letters indicating only an intent  
6 to file). Defendants do not believe that piecemeal mediation of claims subject to  
7 dismissal on multiple grounds will be productive.

8       **O. Trial Estimate**

9           As stated above, Plaintiff believes that the appropriate venue is Nevada state  
10 court. Plaintiff's estimate a three (3) to four (4) week jury trial.

11          As stated above, Defendants believe the case should be dismissed in response  
12 to their dispositive motions. If those motions were to be denied, Defendants  
13 estimate that any trial of these actions will require at least 32 court days.  
14 Defendants cannot yet identify the witnesses they intend to call at trial, but expect  
15 the number of witnesses called by the defense would be at least 30-40.

16       **P. Trial Counsel**

17          Plaintiffs will be represented at trial by Walter J. Lack and Christopher A.  
18 Kanne. Lead trial counsel will be Walter J. Lack.

19          Defendants will be represented at trial by Brad D. Brian, Michael R. Doyen,  
20 Daniel B. Levin, Bethany W. Kristovich, and John M. Gildersleeve of Munger,  
21 Tolles & Olson LLP. Lead trial counsel will be Brad D. Brian.

22       **Q. Independent Expert or Master**

23          The parties agree that the Court need not consider appointing a Master  
24 pursuant to Rule 53 or an independent scientific expert at this time.

25       **R. Timetable**

26          Attached as **Exhibit A** is the completed Schedule of Pretrial and Trial Dates  
27 for Civil Cases.

1 As set forth above, Defendants believe that discovery regarding the SAFETY  
2 Act should be advanced and expedited, that discovery should be coordinated with  
3 discovery in all related actions, and that discovery into broader merits issues will  
4 prove unnecessary. Nonetheless, with these caveats, Defendants have proposed  
5 pretrial and trial dates above as directed by the Court.

6 **S. Other Issues**

7 **Plaintiffs' Statement**

8 Plaintiffs do not offer any other issues at this time, except for the issues  
9 already contained in this Joint Report.

10 **Defendants' Statement**

11 Defendants have described above the most pressing issue affecting the status  
12 or management of this action—namely, the need to coordinate motion practice and  
13 discovery on a critical issue of first impression, the application of the SAFETY Act  
14 under federal law. Defendants also note that this litigation poses complex questions  
15 of case management across multiple jurisdictions, such as ensuring that Defendants  
16 are not subjected to duplicative discovery. Defendants presently intend to seek  
17 consolidation by the Judicial Panel on Multidistrict Litigation.

18 Defendants appreciate the opportunity to discuss these and other issues with  
19 Plaintiffs and the Court in greater detail at the status conference.

20 **T. Patent Cases**

21 Not applicable.

22 **U. Whether the Parties Wish to Have a Magistrate Judge Preside**

23 The parties do not wish to have a Magistrate Judge preside.

24

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1 DATED: July 10, 2018

ENGSTROM, LIPSCOMB & LACK  
WALTER J. LACK  
CHRISTOPHER A. KANNE  
10100 Santa Monica Blvd., 12th Floor  
Los Angeles, California 90067-4113  
Telephone: (310) 552-3800  
Facsimile: (310) 552-9434  
ckanne@elllaw.com

VITITOE LAW GROUP, P.C.  
JAMES W. VITITOE  
5707 Corsa Avenue, 2nd Floor  
Westlake Village, California 91362  
Telephone: (818) 991-8900

11 By: /s/ Christopher A. Kanne  
12 CHRISTOPHER A. KANNE

13 Attorneys for Plaintiffs

15 DATED: July 10, 2018

MUNGER, TOLLES & OLSON LLP  
BRAD D. BRIAN  
MICHAEL R. DOYEN  
DANIEL B. LEVIN  
BETHANY W. KRISTOVICH  
JOHN M. GILDERSLEEVE  
350 South Grand Avenue, 50th Floor  
Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
brad.brian@mto.com

23 By: /s/ Brad D. Brian  
24 BRAD D. BRIAN

25 Attorneys for Defendants

27 Pursuant to Local Rule 5-4.3.4, I, Brad D. Brian attest that the above signatory has  
28 authorized this filing and concurs in its content.